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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
SECURITIES INVESTOR PROTECTION  
CORPORATION,

Adv. Proc. No.  
08-01789 (SMB)

Plaintiff,

SIPA LIQUIDATION

v.

(Substantively  
Consolidated)

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

-----X

In Re:

BERNARD L. MADOFF,

Debtor.

-----X

**FED. R. BANKR. P. 8006 STATEMENT OF ISSUES AND DESIGNATION OF  
RECORD ON APPEAL**

On January 5, 2015, Michael Most, a customer of Bernard L. Madoff Investment Securities LLC and a claimant, by and through his attorneys, Stim & Warmuth, P.C., filed a Notice of Appeal (Dkt. No. 8913) from the "Order Affirming Application of the Trustee's Inter-Account Method to the Determination of the Transfers between BLMIS Accounts" dated

December 19, 2014 [Dkt. No. 8857] entered by the Bankruptcy Court for the Southern District of New York in the above-referenced adversary proceeding on December 22, 2014.

The Appellant submits this Statement of Issues to be presented on appeal and Designation of Items to be included in the record on appeal, pursuant to Fed. R. Bankr. P. 8006 and Local Rule 8007-1.

## **I. STATEMENT OF ISSUES ON APPEAL**

1. Where each Madoff account must be treated separately for net equity purposes, and where any recovery from the pension plans invested with Madoff would be barred by the statute of limitations, and where federal law bars any recovery from the beneficiary of these pension plans, and where the claimant received distributions from these pension plans which were invested in Madoff, did the Bankruptcy Court err in ruling, as a matter of law, that the Trustee can discount these distributions under the guise of inter-account transfers?

## **II. DESIGNATION OF RECORD ON APPEAL**

### **A. Order Appealed From, Transcript of Hearing, and Notice of Appeal<sup>1</sup>**

|            |                                    |                                                                                                                                                                                                                                                           |
|------------|------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 12/08/2014 | <u>8680</u><br>(35 pgs)            | Written Opinion Signed On 12/5/2014. Re: Memorandum Decision Affirming ApplicationOf The Trustees Inter-Account Method To TheDetermination Of Transfers Between BLMIS Accounts (related document(s) <u>6084</u> ) (Greene, Chantel) (Entered: 12/08/2014) |
| 12/22/2014 | <u>8857</u><br>(37 pgs;<br>3 docs) | Order Signed On 12/19/2014 Re: Affirming ApplicationOf The Trustees Inter-Account Method To TheDetermination Of Transfers Between BLMIS Accounts(Related Doc # <u>6084</u> ) . (Greene, Chantel) (Entered: 12/22/2014)                                    |
| 06/20/2014 | <u>7249</u>                        | Transcript regarding Hearing Held on 6/19/2014 10:40AM                                                                                                                                                                                                    |

<sup>1</sup> All documents included in the Appellant's designation have been filed through the Bankruptcy Court's ECF system and pursuant to Local Rule 8007-1(a) have not been re-filed by the Appellant.

|            |                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|------------|------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|            | (64 pgs)                           | RE: Inter-Account Transfers -- Trustee's Motion Affirming Application of Net Investment Method to Inter- Account Transfers. Remote electronic access to the transcript is restricted until 9/18/2014. The transcript may be viewed at the Bankruptcy Court Clerks Office. [Transcription Service Agency: VERITEXT REPORTING COMPANY.]. (See the Courts Website for contact information for the Transcription Service Agency.). Notice of Intent to Request Redaction Deadline Due By 6/27/2014. Statement of Redaction Request Due By 7/11/2014. Redacted Transcript Submission Due By 7/21/2014. Transcript access will be restricted through 9/18/2014. (Ortiz, Carmen) (Entered: 07/03/2014) |
| 01/05/2015 | <u>8913</u><br>(47 pgs;<br>4 docs) | Notice of Appeal (related document(s) <u>8857</u> ) filed by Paula J. Warmuth on behalf of Michael Most. (Attachments: # <u>1</u> Exhibit A - part one (order appealed from) # <u>2</u> Exhibit A - Part 2 # <u>3</u> Exhibit A - Part 3)(Warmuth, Paula) (Entered: 01/05/2015)                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 01/06/2015 | <u>8918</u><br>(2 pgs)             | Certificate of Service of <i>notice of appeal</i> (related document(s) <u>8913</u> ) Filed by Paula J. Warmuth on behalf of Michael Most. (Warmuth, Paula) (Entered: 01/06/2015)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

**B. Motions, Briefs, and Evidentiary Matter**

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| 03/27/2014 | <u>6049</u><br>(5 pg<br>s)         | Scheduling Order Signed On 3/27/2014. Re: Inter-Account Transfer Motion with hearing to be held on 6/19/2014 at 10:00 AM at Courtroom 723 (SMB) (Greene, Chantel) (Entered: 03/27/2014)                                                                                                                                                        |
| 03/31/2014 | <u>6079</u><br>(43 pgs;<br>2 docs) | Memorandum of Law <i>Memorandum Of Law Of The Securities Investor Protection Corporation In Support Of The Trustee's Determinations Regarding Inter-Account Transfers</i> filed by Kevin H. Bell on behalf of Securities Investor Protection Corporation. (Attachments: # <u>1</u> Certificate of Service) (Bell, Kevin) (Entered: 03/31/2014) |
| 03/31/2014 | <u>6084</u><br>(6 pg<br>s)         | Motion to Allow - <i>Trustee's Motion Affirming Application of Net Investment Method to Determination of Customer Transfers Between BLMIS Accounts</i> filed by David J. Sheehan on behalf of Irving H. Picard with hearing to be held on 6/19/2014 at 10:00 AM at Courtroom 723 (SMB) Objections                                              |



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|------------|------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|            |                                    | due by 5/16/2014,. (Sheehan, David) (Entered: 03/31/2014)                                                                                                                                                                                                                                                                                                                                  |
| 03/31/2014 | <u>6085</u><br>(29 pgs)            | Memorandum of Law <i>in Support of Trustee's Motion Affirming Application of Net Investment Method to Determination of Customer Transfers Between BLMIS Accounts</i> (related document(s) <u>6084</u> ) filed by David J. Sheehan on behalf of Irving H. Picard. (Sheehan, David) (Entered: 03/31/2014)                                                                                    |
| 03/31/2014 | <u>6086</u><br>(39 pgs;<br>3 docs) | Declaration of <i>Bik Cheema in Support of the Trustee's Motion Affirming Application of Net Investment Method to Determination of Customer Transfers Between BLMIS Accounts</i> (related document(s) <u>6085</u> , <u>6084</u> ) filed by David J. Sheehan on behalf of Irving H. Picard. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (Sheehan, David) (Entered: 03/31/2014) |
| 05/15/2014 | <u>6670</u><br>(91 pgs;<br>4 docs) | Memorandum of Law <i>in Opposition to Inter-Account Transfer Motion</i> (related document(s) <u>6084</u> ) filed by Paula J. Warmuth on behalf of Michael Most. (Attachments: # <u>1</u> Exhibit A - Customer Claim # <u>2</u> Exhibit B - Objection to Trustee's Determination of Claim # <u>3</u> Exhibit C - Email from Baker & Hostetler) (Warmuth, Paula) (Entered: 05/15/2014)       |
| 05/15/2014 | <u>6671</u><br>(3 pgs)             | Certificate of Service (related document(s) <u>6670</u> ) filed by Paula J. Warmuth on behalf of Michael Most. (Warmuth, Paula) (Entered: 05/15/2014)                                                                                                                                                                                                                                      |
| 06/06/2014 | <u>6926</u><br>(38 pgs)            | Reply Memorandum of Law <i>in Support of Trustee's Motion Affirming Application of Net Investment Method to Determination of Customer Transfers Between BLMIS Accounts</i> (related document(s) <u>6084</u> ) filed by David J. Sheehan on behalf of Irving H. Picard. (Sheehan, David) (Entered: 06/06/2014)                                                                              |
| 06/06/2014 | <u>6927</u><br>(41 pgs;<br>2 docs) | Reply to Motion <i>Reply Memorandum of Law of the Securities Investor Protection Corporation in Support of the Trustee's Determinations Regarding Inter-Account Transfers</i> (related document(s) <u>6084</u> ) filed by Kevin H. Bell on behalf of Securities Investor Protection Corporation. (Attachments: # <u>1</u> Certificate of Service) (Bell, Kevin) (Entered: 06/06/2014)      |
| 06/06/2014 | <u>6928</u><br>(19 pgs;<br>3 docs) | Declaration <i>Declaration of Kevin H. Bell in Support of the Reply Memorandum of Law of the Securities Investor Protection Corporation in Support of the Trustee's Determinations Regarding Inter-Account Transfers</i> (related                                                                                                                                                          |

|  |  |                                                                                                                                                                                               |
|--|--|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  |  | document(s)6084) filed by Kevin H. Bell on behalf of Securities Investor Protection Corporation. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (Bell, Kevin) (Entered: 06/06/2014) |
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**C. Additional Material Designated by Appellant**

None.

Dated: Farmingville, NY  
January 15, 2015

Respectfully submitted,

STIM & WARMUTH, P.C.

By: /s/

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